

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN MACK COLE**, on February 1, 1999 at 10 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 291, SB 292, 1/26/1999
Executive Action: SB 291, SB 292

HEARING ON SB 291

Sponsor: SEN. CRISMORE, SD 41, Libby

Proponents: Robert Throssell, Montana Association of Clerks and Recorders

Information Witnesses: Joe Kerwin, Deputy of Elections,
Secretary of State
Jean Johnson

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time : 7-24}

SEN. CRISMORE, SD 41, Libby, explained that he was asked by the clerk and recorders to bring this bill forth. He explained that this bill requires a precinct committee person, seeking to become a write-in candidate for an office, to file a declaration of intent like any other candidate. If they do not declare, they will not be counted, unless no one declares, in which case, a write-in vote would be counted. This bill allows them to be treated like any other candidate.

Proponents' Testimony:

Robert Throssell, Montana Association of Clerks and Recorders, explained that problems arise with the write-ins for precinct committee person positions. This delays the count and increases the expense. The change proposed in this bill brings the office of committee person in line with the same requirements as other offices in that, the candidates must file for nomination or declare their intent to be a write-in candidate under the procedures.

Informational Testimony:

Joe Kerwin, Deputy of Elections, Secretary of State, explained how write-ins currently work. For a write-in to count, for any office except a precinct committee person, a declaration of intent must be filled out at least 15 days before the election. The exception is, if no one appears on the ballot and no one files a declaration of intent then all write-in votes will be counted. Currently, for the precinct committee person, it is required to count all write-in votes regardless of the number of candidates on the ballot for that position and regardless of the number of people that have filed a declaration. This bill would bring the precinct committee person in line with the law that governs other offices.

Jean Johnson, explained that her experience has shown her that the current law governing the precinct committee person causes an expansion of the time involved in the counting process which becomes an extension of the budget. If the precinct committee members were treated with a higher level of accountability then perhaps they would actually file a declaration.

Questions from Committee Members and Responses:

SEN. WELLS asked **Joe Kerwin** if, under this change, no one has filed for that seat, will a declaration of intent need to be filed or will the write-ins be counted. **Mr. Kerwin** answered that if no one filed to be put on the ballot and no one filed a declaration of intent, then all write-in votes will be counted. If only one person appears on the ballot or if one person files the declaration of intent then those will be the only write-in votes counted. **SEN. WELLS** asked if time was saved by not having to tabulate and keep track of write-in votes when someone has filed a declaration of intent. **Mr. Kerwin** answered that the main time savings would occur in such a situation. Additional savings would occur in other circumstances. **SEN. WELLS** asked him to clarify when he would not count the write-ins. **Mr. Kerwin** said that the write-ins would not be counted if no one filed a declaration of intent and someone appeared on the ballot.

SEN. COLE asked **Mr. Kerwin** to explain the declaration of intent. **Mr. Kerwin** said when a declaration of intent is filed, it shows that the person is intending to be a write-in candidate for an office and would like to have his name counted. The form notifies the clerk of different derivations of the name that is to be counted. Photo copies are made of the declaration and are given to the election judges so when they count the ballots they will know who has filed a declaration of intent and what derivations to count. **SEN. COLE** asked why a person would file a declaration of intent instead of having their name put on the ballot. **Mr. Kerwin** explained that if someone had decided to run after candidate filing had closed, then they would file. Also, if someone had lost at the primary, he could still run at the general election as a write-in candidate. **SEN. COLE** asked if a person filing as a write-in candidate, whose 8 year term limit was up, would have to file a declaration of intent. **Mr. Kerwin** said that they would need to file a declaration of intent if they wanted to run as a write-in candidate, unless no one was running for the party's nomination of that office.

Closing by Sponsor:

SEN. CRISMORE urged the committee to pass **SB 291**.

{Tape : 1; Side : A; Approx. Time : 26-37}

HEARING ON SB 292

Sponsor: **SEN. AL BISHOP, SD 9, Billings**

Proponents: None

Opponents: None

Information Witnesses: Linda Vaughey, Commissioner, Political Practices.
Deborah Smith, Montana Common Cause
Greg Petesch, Code Commissioner,
Legislative Services Division

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, Billings explained that this bill was requested by the code commissioner in order to change the law to align with the decisions of two court cases. The first case, prohibiting solicitation of votes on election day was declared to be unconstitutional. Second, the negligence standard for publishing false statement about a candidates's voting record was declared invalid. This bill changes the law to conform to the court cases.

Informational Testimony:

Linda Vaughey, Commissioner, Political Practices explained that a legal counsel reviewed the bill. It precisely cleans up the language and repeals an unconstitutional statute. The state chose not to appeal either court decision.

Deborah Smith, Montana Common Cause, reviewed the history behind the reason the provision is in the law. She explained, it was presented in response to a particular nasty race. At the time, Common Cause wasn't sure the bill was constitutional, but they support anything that would make the campaigning process more civil.

Questions from Committee Members and Responses:

SEN. HARGROVE asked **Linda Vaughey** to explain the background on campaigning on election day. She explained that she would get the information to him.

SEN. WELLS asked **SEN. BISHOP** if campaigning on election day is allowed, since the court declared the prohibition of solicitation of votes on election day unconstitutional. **SEN. BISHOP** confirmed. **SEN. WELLS** asked why line 23 is being deleted. **SEN. BISHOP** explained that the bill deletes negligence. This means that a person must willfully, not negligently, make or publish a false statement.

SEN. WELLS asked **Linda Vaughey** why line 23, "to make or publish a false statement that reflects unfavorably upon a candidate's

character or morality," was deleted. She explained that she believed that the language was difficult to prove and that it was a First Amendment issue. She would research it further and get back to him. **SEN. WELLS** asked if leaving the line in the bill would tend to keep people more reasonable and clean. She answered that she believed it to be very difficult to monitor.

SEN. BISHOP offered to retrieve Greg Petesh to explain the bill further.

SEN. WILSON asked if line 23 was stricken because it was covered under other areas in the law. **Linda Vaughey** said that she believed it to be a 1st amendment issue and that it was covered under other sections in the law.

SEN. TESTER explained he was told that the reason it was stricken was because it hinders a First Amendment right.

At this time the hearing was suspended until SEN. BISHOP returned with a witness.

{Tape : 1; Side : A; Approx. Time Counter : 37 - 51}

INFORMATION ON SB 228

Discussion was held about the outside committee meeting on the bill. The outside committee will meet on Wednesday, at 1:30 P.M.

EXECUTIVE ACTION ON SB 291

Motion/Vote: **SEN. TESTER** moved that **SB 291 DO PASS. Motion carried 5-0.**

HEARING ON SB 292 (CONTINUED)

Greg Petesch, Code Commissioner, Legislative Services Division, explained that the bill came out of two district court decisions the state of Montana did not appeal, therefore they are valid law and are binding on the state. He explained that the sentence was stricken because the judge in the case found it to be invalid according to similar case decision, the Sullivan decision, which is a free speech and libel case. The judge said that the state interest in protecting the political process from distortions caused by untrue or inaccurate speeches somewhat differ from protecting individuals from defamatory falsehood. The underlying First Amendment principle is the same. This bill removes those provisions that are currently unenforceable.

Questions from Committee Members and Responses:

SEN. TESTER asked **Greg Petesch** how candidates protect themselves. **Mr. Petesch** said the candidate's option would be to challenge the statement through civil action. If the statement was intentionally designed to harm the candidate then the candidate could prevail, but as a public official the standard of proof is much higher than a regular citizen. **SEN. TESTER** asked if the line was simply not enforceable. **Mr. Petesch** confirmed. **SEN. TESTER** asked if there was any way it could be enforced and **Mr. Petesch** said that it was possible, but they would have to come up with different standards.

SEN. WILSON asked **Mr. Petesch** asked how old the New York Times vs. Sullivan case was. He said that the decision was made in 1964.

SEN. WELLS said the legislators sign a pledge that they will conduct campaigns in a civil manner. He added by striking the line, because it is not enforceable. It makes him feel like the pledge is useless. He asked **Linda Vaughey** if she would try to maintain that pledge, in order to encourage people to remain civil. She said that the pledge is voluntary. She said that her office could do more to emphasize the content of the pledge and to be more public to encourage people to live up to the content.

{Tape : 1; Side : B; Approx. Time : 51-68}

Closing by Sponsor:

SEN. BISHOP explained it was unfortunate that there was not more protection against slander towards public officials and that he doesn't know what could be done to eliminate it.

{Tape : 1; Side : B; Approx. Time : 10:53; Comments : Hearing Closed on SB 292}

Discussion on SB 228

The committee addressed the Fiscal Note concerning **SB 228**. **SEN. COLE** pointed out that it was indeterminable and the technical notes were on the back.

EXECUTIVE ACTION ON SB 292

Motion: **SEN. HARGROVE** moved that **SB 292 DO PASS**.

Discussion:

SEN. HARGROVE stated there is a burden of proof. The stricken statement is too subjective to enforce. The court said that we must make these changes, so it has to be done.

SEN. COLE asked if campaigning on election day was prohibited under this bill and **David Niss, Legislative Staff**, explained that it was permissible, under this bill, to campaign on election day.

SEN. HARGROVE asked for some explanation as to why the law says that campaigning on election day is prohibited and yet they were allowed to campaign on election day during the last election.

SEN. WELLS answered that the court repealed the law in the 1997 case which is why they were allowed to campaign on the previous election day.

SEN. TESTER stated he is sponsoring a bill that could easily be incorporated into this bill. His bill states that a candidate cannot willfully publish a false statement about his or her own voting record. He explained that **SB 292** speaks to the opponents voting record.

SEN. HARGROVE replied that it doesn't say opponent, it just says a candidate. **Mr. Niss** said that he thinks it could apply to any candidate.

SEN. TESTER said that the previous Commissioner of Political Practices told him that it would not apply.

SEN. WILSON asked **Mr. Niss** for a legal breakdown of the word willfully. **Mr. Niss** explained that willfully meant with malicious intent.

A brief discussion was held as to whether **SEN. TESTER** could incorporate his bill into this one. **Mr. Niss** said that he would look at the opinion of the previous commissioner to see what the opinion was based on. **SEN. TESTER** would like to look into amending the bill to include a candidate's own voting record. They decided not to take action until **SEN. TESTER** brought in his amendment.

SEN. HARGROVE withdrew his motion that **SB 292 DO PASS**.

ADJOURNMENT

Adjournment: 11:08 A.M.

SEN. MACK COLE, Chairman

KERI BURKHARDT, Secretary

MC/KB

EXHIBIT (sts25aad)